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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,977	03/25/2004	Jian Qin	15105.1	9633
23556	7590	08/09/2006		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 08/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,977

Applicant(s)

QIN

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>7/20/06</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/21/06 has been entered.

Response to Arguments

2. Applicant's arguments filed 7/21/06 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a superabsorbent that is highly water –swellable prior to any treatments) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant repeats the argument that the superabsorbent material of the present invention has a hydrophobic surface rather than a hydrophilic surface an that the

Art Unit: 3761

superabsorbent of Bashaw is chopped, which has the effect of exposing additional hydrophilic groups located below the surface of the copolymer, contributing to its hydrophilic nature. As stated previously, applicant has not provided a showing that the process of Bashaw results in a hydrophilic superabsorbent as compared to the present invention. Secondly, at some point in the process, the superabsorbent has a hydrophobic surface, which renders the need for a surfactant to disperse the superabsorbent in the cellulosic web. Applicant argues the superabsorbent of the present invention is hydrophobic because it is produced in a spinning process and the process results in a different fiber than the fiber resulting from a pulverization process. Although the specification mentions the surface of a SAF is made hydrophobic during the fiber spinning process, a particular type of web i.e. airlaid, wetlaid, is not claimed, and applicant is relying on features which are not recited in the rejected claims.

Applicant further argues Bashaw teaches an aqueous surfactant solution which has a water content of between 95% and 99.998% unlike the surfactant solution of Applicant's invention, which contains between only 0.5% and 30% water by weight of the solvent. Not only is applicant is relying on features which are not recited in the rejected claims, but the claims previously recited an aqueous surfactant solution. The surfactant solution can contain up to 30% water and given the plain meaning of aqueous, the solution being made with water is an aqueous solution irrespective of the percentage of water in the composition.

The argument that the Bashaw invention requires the use of cellulosic fibers unlike the present invention, which does not require cellulosic fibers is not persuasive.

Art Unit: 3761

While Bashaw provides a cellulosic fibers in combination with superabsorbent materials, it does provide the claimed superabsorbent material and surfactant solution. The 'comprising' language used in the independent claims is inclusive or open-ended and does not exclude additional unrecited elements, compositional components, or steps.

Applicant argues the processes used by Applicants and Bashaw are different, the materials are different, and the resulting product is different. Although the materials are similar, the processes are different. However, in the sense of *In re Thorpe* 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted), which states that when the product is claimed the patentability is defined only by the product per se, not by the process of its making and the burden is shifted to Applicants to show that the process of the prior art produces a different product. This should be presented by the factual evidence, and in the instant case the Applicant failed to show a valid side-by-side comparison between their product and the product disclosed by Bashaw, wherein the only difference is the process of their making, as per *In re Dunn*, 349 F. 2d 433 146 USPQ 489 (CCPA 1965).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

Art Unit: 3761

the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 22-26, 27, 29-32, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bashaw et al. USPN 3989586 in view of Howe USPN 5494611.

Art Unit: 3761

As to claims 22, 24-26, 34, and 35, Bashaw discloses a permanently wettable superabsorbent material and method of making the absorbent comprising: treating the superabsorbent material with a surfactant solution (col. 2, lines 9-11; col. 4, lines 35-68). Bashaw discloses the crosslinked copolymer is further activated with methanol, dried and processed in fiber form (col. 4, lines 1-21). The surfactant solution includes an amount of water sufficient to solvate the surface of the superabsorbent material but less than sufficient to cause significant swelling of the superabsorbent material (col. 4, lines 1-5). Bashaw discloses surfactants (col. 4, lines 35-68) similar to the surfactants taught in the present specification page 6, line 25 through page 7, line 7. In particular, Bashaw discloses cetyl dimethylamine oxide. Howe shows that cetyl dimethylamine oxide is an equivalent structure known in the art of lauryl dimethylamine oxide (Howe col. 4, lines 48-61). Because these two surfactants are art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute cetyl dimethylamine oxide for lauryl dimethylamine oxide, which applicant discloses is a suitable surfactant having the claimed functional groups.

Regarding the Flotation Time procedure and the Surface Tension Test and the examiner's interpretation of the tests and performance characteristics of the instant apparatus claims, because the structure recited in the reference is substantially identical to that of the claims of the instant invention, the test claimed properties or functions are presumed to be obvious.

Art Unit: 3761

As to claim 23, Bawash discloses the superabsorbent material is a fibrous form (col. 2, lines 6-45).

As to claim 27, see Bashaw col. 2, lines 6-8.

As to claim 29, see Bashaw col. 4, lines 35-68.

As to claim 30, see Bashaw col. 3, lines 57-59 and col. 4, lines 21-29.

As to claim 31, Bashaw see Example 1.

As to claim 32, Bashaw discloses the surfactant is applied to the superabsorbent material when the superabsorbent material is in powder form, which the examiner interprets to be in a solvated state, as the copolymer is solubized in the solvent to form the powdered copolymer (col. 5, lines 23-27).

6. Claims 28, 33, 36, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bashaw in view of Howe as applied to claims 22 and 34 above and further in view of Paul et al. USPN 6217890.

Art Unit: 3761

As to claim 28, Bashaw/Howe discloses the present invention substantially as claimed. However, Bashaw/Howe does not disclose the claimed group of materials. Paul discloses high absorbency materials in the claimed group as a natural alternative to synthetic high absorbency materials (col. 25, lines 25-40). Therefore, because the natural materials as disclosed in Paul are art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the natural materials for the synthetic material, such as maleic anhydride disclosed in the Bashaw reference.

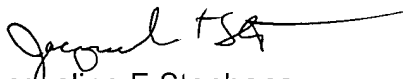
As to claims 33 and 36, Bashaw/Howe discloses the paper product is highly absorbent (col. 7, lines 18-20). However, Bashaw/Howe does not specifically disclose the fiber in a disposable absorbent product as claimed. Paul discloses a similar treated superabsorbent material for use in a diaper comprising a liquid-permeable topsheet 22, a backsheet 20 attached to the topsheet, and an absorbent structure 24 made with a treated superabsorbent fiber positioned between the topsheet and the backsheet for the benefit of having highly absorbent material in a relatively thin absorbent article (Paul col. 24, line 52 through col. 25, line 52). It would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the invention of Bashaw/Howe into a disposable absorbent article as claimed, since the invention of Bashaw/Howe provides a highly absorbent article, which both references teach is desired.

Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Primary Examiner
Art Unit 3761

August 7, 2006